



STAFF REPORT

Regular Agenda

To: Gallatin County / Bozeman Area Board of Adjustment

From: Amy Waring, Code Compliance Specialist

Subject: Appeal of a Code Compliance Specialist determination regarding a nonconforming use determination for Duffy

Hearing Date: May 15, 2006

Location: Gallatin County Courthouse – Community Room
311 W. Main, Bozeman, MT

BACKGROUND

Vivian Duffy owns the 5-acre parcel at 699 Bozeman Trail Road (Tract 12 in the NW ¼, SW ¼, Sec. 16, T 2 S, R 6 E). The property is located in the A-S Agricultural Suburban District of the Gallatin County / Bozeman Area (GC/BA) Zoning District. Vivian Duffy acquired the parcel with her husband Murray Duffy (deceased) in 1969.

Murray Duffy established Central Helicopters in the 1960s, and operated from 699 Bozeman Trail Road. Mark Duffy (son of Vivian and Murray) has operated Central Helicopters since 1984. Central Helicopters relocated from 699 Bozeman Trail to Gallatin Field Airport in approximately 2003 or 2004. Prior to its relocation, Central Helicopters landed helicopters at 699 Bozeman Trail Road on a regular basis.

Excel Drilling Inc. incorporated on February 28, 2003. Tom Duffy (Mark's son) operates Excel Drilling from 699 Bozeman Trail Road. Excel Drilling custom engineers and operates helicopter drills and small buggy drills used in conjunction with the oil industry.

In 2004, I reviewed a complaint against Central Helicopters, and determined that Central Helicopters had a valid nonconforming use to operate from 699 Bozeman Trail. This decision was not appealed.

2006 Complaint and Decision

On April 21, 2006 I received a complaint that business activities associated with Excel Drilling and Air One operating at 699 Bozeman Trail violate the GC / BA Zoning Regulation, and that Central Helicopters no longer uses the site for its business operations. Furthermore, the complainant alleges that Excel Drilling and Air One did not exist before July 1999, and that their

use of the site is not grandfathered as a valid nonconforming use. The complainant alleges that Excel Drilling is excessively noisy and a public nuisance, creates noxious exhaust fumes, and is an eye sore. I received three more written complaints regarding Excel Drilling in June 2006, and numerous phone complaints.

On August 21, 2006, I issued a written decision that the Duffy's do not have valid nonconforming uses to operate/manufacture drill rigs (Excel Drilling) or operate Air One at 699 Bozeman Trail (i.e., the uses were not grandfathered). I ordered the Duffy's to cease and desist all operations associated with these uses.

Appeal

On September 21, 2006, the Duffy's appealed my August 21, 2006 nonconforming use decision and cease and desist order to Excel Drilling for the operation and manufacture of drills rigs at 699 Bozeman Trail. Their appeal was timely. Pursuant to MCA § 76-2-223 and 226 and Section 56.030 *et. seq.* of the GC/BA Zoning Regulation, any person aggrieved by any decision made by Gallatin County regarding Part 2 Zoning may appeal such determination to the Board of Adjustment. The appeal stays all proceedings until the BOA hears and decides the appeal.

In their appeal, the Duffy's state the following:

1. They have been drilling shot holes for oil exploration for several years prior to July 1999, and continued in the business after July 1999 in substantially the same size and manner. **Doc. 30: Appeal**
2. **In July 1999**, the Duffy's state that they were repairing six drills (HP 200s) at 699 Bozeman Trail Road, and they were also designing a prototype for a new drill (HP 400s). As evidence, the Duffy's submitted check stubs showing they paid \$50,000 to Bertram Drilling for drills on April 7, 1999 and check stubs showing that the drills were sold on November 2, 1999 to Omni Energy. **Doc 30: Appeal letter & Exhibit D, E)**
3. **In 1994**, the Duffy's bought three Nodwell machines and built an auger drill to put them on, allegedly at 699 Bozeman Trail. They later sold them to Omni Energy. **(Doc 30: Appeal, Exhibit E).**
4. **In 1991**, the Duffy's built some people portable-drilling rigs at 699 Bozeman Trail, and sold them to a company in Venezuela. **(Doc 30: Appeal, Exhibit E)**
5. **In 1987**, the Duffy's purchased 20 drills from Gerox, worked on them, and modified them at 699 Bozeman Trail. They later sold the drills to Conoco who took them to the Congo in Africa. **(Doc 30: Appeal, Exhibit E).**

STAFF FINDINGS

1. The Gallatin County / Bozeman Area (GC/BA) Zoning Regulation was adopted on July 27, 1999, and amended thereafter.
2. Vivian Duffy owns a 5-acre parcel at 699 Bozeman Trail. The property is located in the A-S District of the GC/BA Zoning District.

3. Section 10 regulates permitted and conditional uses in the **A-S District**. The intent of this district is to, “Encourage cluster development so that areas of agriculture and areas of environmental concern are preserved.”
4. Pursuant to Section 10.020, permitted and accessory uses in the **A-S District** include items such agricultural activities, single-family dwellings, home day cares, plant nurseries, guesthouses, and home occupations. A limited number uses are allowed with a conditional use permit, such as airfields for personal use, bed and breakfast homes, churches, schools, and veterinary offices. **Industrial uses are not allowed.**
5. Manufacturing and industrial uses are allowed in the M-2 Manufacturing and Industrial District.
6. **Section 50.160** of the GC/BA Zoning Regulation regulates nonconforming uses and structures. Applicable portions of the regulation include:
 - A. **Continuation.** Any structure or use lawfully existing upon the effective date of these Regulations may be continued *at the size and manner of operation existing upon such date* except as hereinafter specified, or in the case of signage as specified in Section 65.
 - C. **No Reversion.** When any lawful nonconforming use of any structure or land in any district has been changed to a conforming use, it shall not thereafter be changed to any nonconforming use.
 - D. **Abandonment.** When any lawful nonconforming use of any structure or land is discontinued for a period of ninety (90) days, any future use of the building or structure or land shall be in conformity with the provisions of these Regulations.
 - F. **Changes in Non-Conforming Uses.** 1) A lawful nonconforming use shall not be changed except in conformance with the use requirements of the zone in which it is located. Except, however, a lawful nonconforming use may be changed to another nonconforming use, provided that a conditional use permit is obtained from the commission.
 - I. **Expansion of nonconforming use.** A lawful nonconforming use may be expanded only through the granting of a conditional use permit by the commission...
7. Pursuant to Resolution No. 2001-09, the Gallatin County Commission approved amendments to the nonconforming use language on January 23, 2001. The changes clarified the regulation, but did not change the overall content of nonconforming use requirements.
8. On May 22, 2006, Mark and Tom Duffy met with me in my office to discuss the complaint (Doc. 22). I also spoke with Mark on the phone on May 25, 2006 (Doc. 24), and received a written timeline of activities on June 5, 2006 (Doc. 25). The Duffy’s

provided additional information in their appeal on September 21, 2006 (Doc. 30). The Duffy's state the following:

- § The Duffy's became involved in oil exploration in the 1970s. They contracted with a company called Helidrills in the 1970s and early 1980s. They incorporated as American Helicopter Drilling in 1985.
 - § Under the auspices of American Helicopter Drilling, Inc., the Duffy family sold, purchased, maintained, and manufactured drills at 699 Bozeman Trail Road from 1985 through the 1990s. They sold drills to companies all over the world. American Helicopter Drilling had offices in Denver, CO and Edmonton, Alberta in addition to the site at 699 Bozeman Trail.
 - § They had 25 drills (HP 200) at their peak in the 1980s. (It is unclear if all 25 drills at peak operation were built, stored, and maintained at 699 Bozeman Trail Road.) In approximately 1993-94, they sold the majority of their HP 200 drills, and switched to a new drill called the "XR." They had six of the XR drills made in Denver.
 - § Mark stated that the family was using the site at 699 Bozeman Trail in 1993-94 for storage and maintenance. He also stated that their drilling business operated from Colorado from 1995 through 1997.
 - § The Duffy's sold their HP 200 drills to Omni Energy in 1997. They switched to a new drill called the XR, and made six drills in Denver.
 - § Mark Duffy submitted records showing that they bought six drills from Bertram Drilling on April 7, 1999, and sold the drills on November 2, 1999. Mark Duffy stated that the six HP 200 drills were stored and repaired in their shop at 699 Bozeman Trail when the zoning was enacted in July 1999.
 - § The Duffy's stated that they were designing a prototype for a new drill (HP 400) at 699 Bozeman Trail in July 1999. It took them two years to design the drill. The Duffy's built and operated the first HP 400 in 2002.
 - § **The Duffy's incorporated Excel Drilling in 2003 and built 12 of the HP 400 drills.**
9. According to the Montana Secretary of State, American Helicopter Drilling, Inc. incorporated on April 23, 1984 and their status changed to inactive on December 31, 1997. **(Doc. 23)** This timeline corresponds to Mark Duffy's statement that they formed American Helicopter Drilling in 1985, and sold all of their drills to Omni Energy in 1997.
10. According to the Montana Secretary of State, Excel Drilling incorporated on February 28, 2003, and remains active. The registered agent is listed as Thomas Duffy at 699 Bozeman

Trail Road. **(Doc. 23)** This timeline corresponds to the Duffy's statement that they built 12 drills in 2003.

11. According to the February 2007 MT Department of Revenue "Business Property Reporting Form" completed by Robyn Duffy, Excel Drilling has been in business for three years and 11 months (approx 2003). The MT Department of Revenue records also show that Excel drilling acquired two pieces of heavy equipment in 2004, a Buggy for \$58,688 and equipment labeled as unknown for \$85,000. **(Doc. 45)**
12. Excel Drilling maintains a website at <http://www.exceldrilling.com>, which is the source of the photos below.

Figure 1: Excel Drilling Heli Drills and Buggy



Source: <http://www.exceldrilling.com>. Note, you can see 12 drills and the buggy in the center. The photo appears to have been taken on the concrete pad at 699 Bozeman Trail Road with Franklin Hills subdivision in the background. The Duffy's stated they built the 12 drills in 2003. Gallatin County Department of Revenue tax records show that the buggy was purchased in 2004.

Figure 2: Excel Drilling Buggy



Source: <http://www.exceldrilling.com/buggy.html>. Note, you can see Franklin Hills subdivision in the background. Gallatin County tax records show the buggy was purchased in 2004.

13. I performed inspections 699 Bozeman Trail Road on 4/24/07, 3/19/07, 9/5/06, 6/15/06, and 4/21/06. During these inspections, I observed as many as 11 drills, the buggy, numerous flat bed trailers, heavy machinery, and up to seven employees working on site. On September 5, 2006, I observed Excel Drilling employees loading drills onto a semi-trailer and driving away.



Figure 3: 4/21/06, note 11 Drills stored outside



Figure 5: 9/5/06; drills loaded on semi truck



Figure 4: 6/15/06, note Buggy stored outside



Figure 6: 9/5/06; note semi with drills departing site



Figure 7: 3/19/07; note barrels stored outside



Figure 9: 4/24/07; note semi truck parked on the concrete pad



Figure 8: 4/24/07; note Excel drilling equipment stored outside

14. Mr. Renner submitted photographs of Excel Drilling taken on 9/3/06.



Figure 10: 9/3/06; note maintenance and cleaning of drills



Figure 11: 9/3/06; note 10 drills & 6 employees



Figure 12: 9/3/06; note drill maintenance & cleaning, employees and large trucks

15. Joan Holborn submitted an aerial photograph that was taken on July 5, 1995. The photo is a snapshot in time. However Ms. Holborn has resided on her property south of the Duffy's since 1987 and did not observe any storage or outside maintenance of drills until 2002/2003.



Figure 13: 1995 aerial of Duffy property. Note empty field and concrete pad

16. George Renner submitted photographs taken in the fall of 1991 when he built the shop on his property. The photo is a snapshot in time. However Mr. Duffy has resided on his property south of the Duffy's since 1991 did not observe outside storage and maintenance of drills until 2002/2003.



Figure 14: 1991; Duffy property in background, note empty field (where barrels are today)



Figure 15: 1991; Duffy property in background; note empty concrete pad

17. On April 25, 2006, I spoke with Luke Rainey, a former Excel Drilling employee. He worked for Excel Drilling for approximately 3 months in 2003 or 2004. He trained at 699 Bozeman Trail for work that Excel Drilling performed off site. He stated that employees performed fitness tests and drill preparation on the property. At any one time, Mr. Rainey said there could be up to 10 to 18 employees on site learning how to use the drill and going over the machines. The drill work was noisy and produced noxious fumes.

SUMMARY OF FINDINGS

- § The Duffy family has been involved in the oil business since the 1970s. They incorporated as American Helicopter Drilling in 1985, which became active in 1997. The business went up and down with changes in the oil industry.
- § The Duffy's had 25 drills at their peak in the 1980s (allegedly at 699 Bozeman Trail).
- § The site at 699 Bozeman Trail was used for storage and maintenance of drills in 1993-1994.
- § The Duffy's oil business operated from Colorado from 1995-1997.
- § The Duffy's sold all their HP200 drills in 1997. They switched to a new drill called the "XR" and had six of the XR drills made in Denver.
- § The Duffy's did not specifically account for their activities in 1998.
- § Mark Duffy stated that they bought six drills from Bertram Drilling in 1999 and repaired and stored them in their shop at 699 Bozeman Trail Road. Mark Duffy submitted records showing they bought these drills on April 7, 1999, and that they sold the drills on November 2, 1999.
- § The Duffy's were designing a prototype for a new drill (HP 400) at 699 Bozeman Trail in July 1999. It took them several years to complete the design work. They built and operated the first HP 400 in 2002.
- § Excel Drilling incorporated in 2003.
- § Neighbors did not see outdoor maintenance and storage of drills until 2002/2003.

STAFF SUGGESTED ACTION

The Gallatin County / Bozeman Area Board of Adjustment, after hearing and considering all public testimony, must consider the manner and extent of the Duffy drilling business at 699 Bozeman Trail Road at the time zoning was enacted in July 1999, and compare it to the manner and extent of the current operation of Excel Drilling.

The Board must decide if the current use is the substantially the same in manner and extent of operations as the use that existed in July 1999, and affirm, modify, or reverse the August 21, 2006 decision made by the Code Compliance Specialist.

EXHIBITS

- A. Doc. 17: MT Sec. of State information re. Excel Drilling Inc.
- B. Doc. 22: A. Waring's notes of meeting with Mark and Tom Duffy
- C. Doc. 23: MT Sec. of State information re. American Helicopter Drilling Inc.
- D. Doc. 25: Duffy timeline for activity at 699 Bozeman Trail Road
- E. Doc. 29: August 21, 2006 decision and cease and desist order
- F. Doc. 30: September 21, 2006 appeal
- G. Doc. 45: Department of Revenue business property reporting form for Excel Drilling